IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

MONDAY, THE 24TH SEPTEMBER 2007 / 2ND ASWINA 1929

CRL.A.No. 125 of 2003()

SC.269/2000 of ADDL.SESSIONS JUDGE (AD HOC-II), THODUPUZHA
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APPELLANT: ACCUSED

SIVADASAN S/O. RAGHAVAN,
CHENNATHUKIZHAKKETHIL VEEDU, ANACHARI PARA BHAGOM,
KOTTAMALA KARA, VAGAMON VILLAGE, IDUKKI DISTRICT.

BY ADV. SRI.C.C.THOMAS

RESPONDENTS: COMPLAINANT

STATE OF KERALA, REPRESENTED BY THE
S.I.OF POLICE, PEERMADU, IDUKKI DISTRICT
REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF
KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR, SRI C.K.SURESH

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 24/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON CRL.M.P.NO.694/2003 IN CRL.A.NO.125/2003

DISMISSED.

SD/- K.R.UDAYABHANU, JUDGE

24/09/2007

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K.R.UDAYABHANU, J.

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Crl.A.No.125/2003-A

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Dated this the 24th day of September, 2007

J U D G M E N T

The appellant is the accused in S.C.No.269/2000 with respect to the offence under Section 55(a) of the Abkari Act on the allegation that on 26/04/1999 at about 4 p.m, the accused was found in possession of a plastic bottle containing 250 ml of arrack and a glass on the side of Uzhupooni-Kovilivattom road, Wagamon Village, Kottamalakkara.

2. The evidence adduced in the matter consisted of the testimony of PWs.1 to 4, Exts.P1 to P7 and MO.1 glass. It is the defence case that the accused was taken into custody as he could not furnish the whereabouts of the one Nandakumar (PW.2) as directed by the Sub Inspector of Peermedu (PW.4) and when he was forced to show the above person by the police officials he ran away and in the evening he was taken to the police station and implicated in the present case.

3. PWs.1 and 2 are the independent witnesses to the mahazar. Both of them have not supported to the prosecution version. PW.3 is

the Assistant Sub Inspector of Police and PW.4 is the Sub Inspector, who have testified as to the incident. It is their version that on the particular day while proceeding on patrol duty they detected the accused standing on the southern side of the road and that he was holding a plastic bottle and a glass. On seeing the police, the accused tried to pour out the liquid contained in the bottle. The police stopped him and seized the bottle that contained 250 ml of liquid. It was found to be liquor on testing and smelling. The entire bottle was sealed and taken as sample. Ext.P2 is the mahazar prepared at the spot and Ext.P5 is the arrest memo. Ext.P7 chemical analysis report contains the finding that the sample contained 36.38% by volume of ethyl alcohol.

4. It is the contention by the counsel for the appellant that the spot mentioned in Ext.P2 mahazar and as per the prosecution case is that the accused was standing on the southern side of the road. It is pointed out that as per Ext.P5 arrest memo, the place where the accused have been apprehended is different. The place mentioned in Ext.P5 is that he was arrested from the pathway lying from the road to his house. It is also pointed out that the accused was found carrying a bottle and a glass for the purpose of sale of liquor. PW.4

the Sub Inspector has testified that the body search of the accused was made but no currency was seized. According to the counsel, the above would indicate that the case of the prosecution cannot be believed as had he sold the liquor there would have been cash in his possession. It is also pointed out that the witnesses in Ext.P5 arrest memo are two ladies and in case the accused was arrested as alleged and seizure mahazar prepared at the spot. The same witnesses would have been the witnesses to the arrest memo also. It is also conveyed that considering the quantity of ethyl alcohol that is 36.38%, it is more probable that the liquor contained was Indian Made Foreign Liquor and, hence, the accused is entitled to keep the above quantity in his possession. It is also pointed out that in view of the fact that the detecting officer and the investigating officer is PW.4 himself the above discrepancies are material and that the accused is entitled to the benefit of doubt.

Of the inconsistencies pointed out, I find that the difference regarding the spot from which the accused was arrested as mentioned in Ext.P2 mahazar and as contained in Ext.P5 arrest memo which was proved by the prosecution itself is relevant and significant. There is no explanation for the above inconsistencies. In view of the stringent

punishment provided under the statute, I find that the prosecution is not entitled to have such discrepancies in the documents produced. In the circumstances, I find that the appellant/accused is entitled for the benefit of doubt. The conviction imposed is set aside. The accused is acquitted.

The criminal appeal is allowed as above.

K.R.UDAYABHANU,
Judge

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K.R.UDAYABHANU, J.

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Crl.A.No.125/2003-A

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J U D G M E N T

24th September, 2007